

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION**

MACKINAC CENTER FOR PUBLIC  
POLICY,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION, *et al.*,

Defendants.

Case No. 1:23-cv-10795-TLL-PTM

**JOINT MOTION TO STAY DEFENDANTS' RESPONSE DEADLINE**

Plaintiff's complaint challenges a pandemic-related policy of the U.S. Department of Education pausing monthly payments and interest accrual on certain federal student loans. *See* ECF No. 1. Defendants' deadline to respond to that complaint was previously adjourned until September 29, 2023. *See* ECF No. 17. The parties now move to stay Defendants' response deadline pending the filing of an amended complaint.

There is good cause to stay Defendants' deadline to respond to the complaint because any such response will have no practical effect on the proceedings in this case. To be sure, Defendants believe that the currently operative complaint is moot given the recent resumption of monthly payments and interest accrual on federal student loans. *See* Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 271, 137 Stat. 10, 33–34 (2023) (requiring that the waivers and modifications used to suspend payments and interest on certain loans "shall cease to be effective"). Nevertheless, Plaintiff has indicated it intends to file an amended complaint by October 6 (rather than by September 29, as Plaintiff had previously stated to Defendants after deciding that it would not voluntarily dismiss this action) that will differ substantially from the currently operative complaint, incorporating events that have occurred since the original complaint was filed and challenging the Department of Education's

authority to credit certain student loan borrowers with progress towards loan forgiveness during the period in which monthly payments and interest accrual were paused. The filing of a substantially amended complaint will moot any motion Defendants might file attacking the currently operative complaint. *See Klein by Klein v. Caterpillar Inc.*, 581 F. Supp. 3d 912, 919 (E.D. Mich. 2022). And while Defendants expect that the amended complaint will be subject to dismissal, *see Cato Inst. v. Cardona*, No. 1:23-cv-11906, 2023 WL 5232910 (E.D. Mich. Aug. 14, 2023), Plaintiff “may amend its pleading once as a matter of course,” Fed. R. Civ. P. 15(a). Thus, the jurisdictional defenses Defendants would otherwise assert against the currently operative complaint, and which Defendants will assert against the amended complaint after it is filed, do not preclude Plaintiff from filing its amended complaint. *See Broyles v. Corr. Med. Servs., Inc.*, 2009 WL 3154241, at \*3 (6th Cir. Jan. 23, 2009) (“Rule 15(a) permits a plaintiff to file an amended complaint, without seeking leave from the court, at any time before a responsive pleading is served.”); *see also id.* at \*4 (“[B]ecause Broyles was not required to seek leave, the fact that the amendment would be futile did not provide a basis for the district court to strike Broyles’ amended complaint.”).

Given these circumstances, it would be inefficient to require Defendants to respond to the complaint at this time. *Cf. Swanigan v. City of Chicago*, 775 F.3d 953, 963 (7th Cir. 2015) (“After learning that Swanigan wanted to amend his complaint, the district court should have lifted the stay and waited for the amended complaint before evaluating any jurisdictional impediments to hearing the case.”). Accordingly, the parties respectfully request that the Court stay Defendants’ obligation to respond to the complaint by September 29, 2023, pending the filing of Plaintiff’s amended complaint.

Dated: September 29, 2023

/s/ Sheng Li

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Respectfully submitted,

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